



**Jeffrey S. Lanning**

Vice President - Federal Regulatory Affairs  
1099 New York Avenue NW  
Suite 250  
Washington, DC 20001  
202.429.3113  
jeffrey.s.lanning@centurylink.com

**Via ECFS**

**EX PARTE NOTICE – *Correction to May 9, 2018 Submission***

May 15, 2018

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: *CenturyLink Broadband Deployment Semi-Annual Report*, WC Docket  
No. 10-110

Dear Ms. Dortch:

On May 9, 2018, CenturyLink filed an ex parte notice that documented a meeting on May 7, 2018 with Staff of the Wireline Competition Bureau (“Bureau”) and the Office of General Counsel, regarding the above-captioned matter. The purpose was to discuss different types of universal service support the company received in the former Qwest operating territory between April 1, 2011 and April 1, 2018, and whether any adjustments should be made to the broadband deployment totals that CenturyLink reported in connection with the Commission’s Order approving the transfer of control of Qwest to CenturyLink, in light of that universal service support.<sup>1</sup> CenturyLink also enclosed with its May 9<sup>th</sup> ex parte notice attachments that included deployment data requested by Bureau Staff and answers to questions Staff had posed.

It came to CenturyLink’s attention subsequently that its ex parte notice included a couple of inadvertent administrative errors, which are described as follows:

- Ex Parte Notice Letter – page 1 – the introductory sentence refers to the ex parte meeting as having occurred on “May 7, 2019”;

---

<sup>1</sup> *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Docket No. 10-110, Memorandum Report and Order, 26 FCC Rcd 4194 (2011) (*CenturyLink-Qwest Merger Order*).

Ms. Marlene H. Dortch

May 15, 2018

Page 2 of 2

- Ex Parte Notice Letter – pages 2, 3 and 4 of 4 – the header references the date of the submission as “April 23, 2018”; and
- Ex Parte Notice Attachment – Responses to Narrative Questions – the third line includes a heading, “***May 8, 2018 DRAFT – Privileged and Confidential***”.

In the copy of the May 9<sup>th</sup> ex parte notice being resubmitted in its entirety today, these administrative errors have been corrected so that the first and second of the preceding references now reflect “May 7, 2018” and “May 9, 2018” and for the third reference the description of the attachment as a “***DRAFT***”, subject to being “***Privileged and Confidential***”, has been removed. Finally, the spelling of a couple of the names of Staff in the May 9<sup>th</sup> notice letter were also corrected.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey D. Lang". The signature is fluid and cursive, with a long horizontal stroke at the end.

Copies via email to: Madeleine Findley  
Daniel Kahn  
Terri Natoli  
Alex Minard  
Pam Megna  
Joel Rabinovitz



**Jeffrey S. Lanning**

Vice President - Federal Regulatory Affairs  
1099 New York Avenue NW  
Suite 250  
Washington, DC 20001  
202.429.3113  
jeffrey.s.lanning@centurylink.com

EX PARTE NOTICE

May 9, 2018

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: *CenturyLink Broadband Deployment Semi-Annual Report*, WC Docket No. 10-110

Dear Ms. Dortch:

On Monday, May 7, 2018, Craig Brown, Tom Freeberg, Jeff Glover, Dan Sorensen, Michael Underwood (all by phone) and I, on behalf of CenturyLink, and Patrick Halley, with Wilkinson Barker Knauer, LLP, met with Madeleine Findley, Daniel Kahn, Terri Natoli, Alex Minard, and Pam Megna of the Wireline Competition Bureau ("Bureau") and Joel Rabinovitz of the Office of General Counsel, regarding the above-captioned matter.

In this meeting, we discussed the different types of universal service support the company received in the former Qwest operating territory between April 1, 2011 and April 1, 2018, and whether any adjustments should be made to the broadband deployment totals that CenturyLink reported in connection with the Commission's Order approving the transfer of control of Qwest to CenturyLink, in light of that universal service support.<sup>1</sup> Given the relevant Commission orders, CenturyLink reiterated that the only locations that should be excluded from the broadband deployment percentages reported to the Commission under the CenturyLink-Qwest merger commitments are those funded with CAF I Incremental Support or CAF II support. CenturyLink is providing as attachments to this notice deployment data requested by Bureau staff and answers to questions they have posed.

To determine compliance with the appropriate interpretation of CenturyLink's merger commitments, it is important to understand how those commitments relate to the Commission's

---

<sup>1</sup> *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Docket No. 10-110, Memorandum Report and Order, 26 FCC Rcd 4194 (2011) (*CenturyLink-Qwest Merger Order*).

universal service orders, and particularly the *Transformation Order*.<sup>2</sup> Of course the starting point for this analysis is the language of the commitments in the *CenturyLink-Qwest Merger Order*. CenturyLink explained that the Commission approved the CenturyLink-Qwest merger subject to the conditions set forth in Appendix C of the Order.<sup>3</sup> The Order did not impose any requirements on the merged company beyond those included in Appendix C, which enumerated the voluntary commitments that had been offered by CenturyLink and Qwest. Those commitments were accepted as conditions for the Commission's approval of the merger, including the seven-year commitments to upgrade and expand broadband availability in legacy Qwest territory. They did not preclude CenturyLink from counting toward its broadband deployment commitments legacy Qwest locations in areas receiving legacy universal service support.<sup>4</sup>

This conclusion is not negated by a statement in the *CenturyLink-Qwest Merger Order* that CenturyLink's broadband deployment and adoption commitments constituted public interest benefits, in part, because they "rely on private investment, and do not rely on public funding sources such as universal service support."<sup>5</sup> When considered in light of the ordering clauses and the text of the commitments themselves, that statement should be read as descriptive and not prescriptive. Federal universal service support at the time did not require or even explicitly support broadband and it was treated for accounting and tax purposes as revenue not contributions to capital investment. In any case, this sentence in the *Merger Order* did not prohibit CenturyLink from counting a location toward its merger commitments simply because that location was in an area receiving universal service support.

Seven months after approving the merger, the Commission substantially transformed the federal high-cost universal service programs. In the *Transformation Order*, the Commission took three key steps relevant here. First, the Commission froze legacy high-cost support at end of 2011 levels. It required recipients of Frozen Support to use one-third of the total amount of that support in 2013 "for building and operating broadband-capable networks used to offer their own retail service in areas substantially unserved by an unsubsidized competitor."<sup>6</sup> It further required recipients to do the same

---

<sup>2</sup> *Connect America Fund*, WC Docket 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), subsequent history omitted (*Transformation Order*)

<sup>3</sup> See *CenturyLink-Qwest Merger Order* ¶ 45 ("as a condition of this grant and pursuant to section 214(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(c), CenturyTel, Inc. d/b/a CenturyLink shall comply with the conditions set forth in Appendix C of this Order.")

<sup>4</sup> Indeed, Appendix C's broadband commitment levels were based on the total number of living units in legacy Qwest territory (i.e., approximately 16.5 million), even though nearly all those locations were in areas receiving federal universal service support at that time. Appendix C also projected that CenturyLink's broadband deployment commitments would result in 4 million living units in Qwest territory gaining access to broadband service at speeds of 5 Mbps or higher downstream. Again, this projection was based on the total number of living units in Qwest areas, nearly all of which was receiving legacy universal service support.

<sup>5</sup> *CenturyLink-Qwest Merger Order* ¶ 37.

<sup>6</sup> *Transformation Order* ¶ 149.

with two-thirds of the Frozen Support they received in 2014, and all of that support in 2015 and any subsequent years.<sup>7</sup> The Commission subsequently reiterated that carriers could use their Frozen Support to “maintain and operate existing” networks.<sup>8</sup> The Commission also clarified that the obligation to use Frozen Support for broadband applied to carriers at the holding company level.<sup>9</sup>

CenturyLink explained in the meeting that it made the certifications regarding the use of Frozen Support on a holding company basis, and that its operating expenses for broadband in areas substantially unserved by competitors substantially exceeded the amount of Frozen Support. It further noted that a comparatively small amount of CenturyLink’s frozen support was attributable to the Qwest serving areas subject to the merger commitment. Notably, unlike for CAF I Incremental Support, the *Transformation Order* included no restriction on the use of Frozen Support to meet merger commitments. Accordingly, CenturyLink believes that its receipt and use of Frozen Support should not have any bearing on the broadband deployment commitment in the *CenturyLink-Qwest Merger Order*.

Second, the *Transformation Order* established the structure and detailed rules for the CAF Phase I Incremental Support program – a one-time \$300 million non-recurring broadband deployment program. Unlike Frozen Support, the Incremental Support program imposed specific broadband deployment obligation in unserved areas,<sup>10</sup> and the Commission clearly stated that “that CAF Phase I incremental support will not be used to satisfy any merger commitment or similar regulatory obligation.”<sup>11</sup> In addition, CAF I Incremental Support funding was treated as a contribution to capital for accounting and tax purposes, unlike legacy universal service high-cost support. Accordingly, CenturyLink excluded such locations in its broadband deployment calculations used for the semi-annual progress reports it has filed with the Commission pursuant to the *CenturyLink-Qwest Merger Order*.

Finally, the *Transformation Order* created the overall structure for the CAF Phase II program, to be subsequently implemented by the Wireline Competition Bureau, to establish “a framework for extending broadband to millions of unserved locations over a five-year period, including households, businesses, and community anchor institutions, while sustaining existing voice and broadband services.”<sup>12</sup> Over the course of the next few years, the Commission and Bureau made a number of decisions regarding the structure of the CAF II program. Importantly for the purpose of determining how to treat the program in connection with the CenturyLink-Qwest Merger commitments, the CAF II

---

<sup>7</sup> CenturyLink only received Frozen Support in 2015 and later years in a single state with legacy Qwest service territory—Wyoming.

<sup>8</sup> *Connect America Fund*, WC Docket 10-90, Order, 28 FCC Rcd 14887 ¶ 10 (2013).

<sup>9</sup> *Id.* at ¶ 11.

<sup>10</sup> “We intend for CAF Phase I to enable additional deployment beyond what carriers would otherwise undertake, absent this reform. Thus, consistent with our other reforms, we will require carriers that accept incremental support under CAF Phase I to meet concrete broadband deployment obligations.” *Transformation Order* ¶ 137.

<sup>11</sup> *Transformation Order* ¶ 105, Figure 1, ¶ 146.

<sup>12</sup> *Id.* at ¶ 156.

Ms. Marlene H. Dortch

May 9, 2018

Page 4 of 4

program resembles Incremental Support and differs from Frozen Support and other USF programs in several critical aspects: (1) it imposes substantial explicit broadband deployment obligations; (2) support levels were calculated using a cost model that explicitly covered the capital expenditures for deployment; and (3) there are specific penalties for failing to meet the deployment obligations.

Based on these similarities between Incremental Support and CAF II support, and the differences between those two programs and other forms of universal service support, CenturyLink has excluded locations receiving CAF II support from its calculations for the *CenturyLink-Qwest Merger Order*. Those two programs explicitly target funds toward the construction of broadband networks, in contrast with most other federal and state universal service support programs, which have provided additional revenue to help fund ongoing operations where customer revenue is insufficient to support universal service. CenturyLink believes that the receipt of other forms of universal service support, including CAF I Frozen Support and the legacy programs from which it was created, and other universal service programs, such as CAF I Intercarrier Compensation support or Lifeline funding should require additional locations to be excluded from the broadband deployment totals.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this notice is being filed in the above-referenced docket. Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey D. Lang".

Copies via email to: Madeleine Findley  
Daniel Kahn  
Terri Natoli  
Alex Minard  
Pam Megna  
Joel Rabinovitz

Please complete the table below with data as of 4/1/18.

Data as of 4/1/18	All Areas Within Qwest legacy Footprint (Including Areas Receiving Universal Service Support (including CAF I and/or CAF II))		Areas Receiving Universal Service Support (including CAF I and/or CAF II)*** Within Qwest Legacy Footprint	
	Total Number	Number with access to at least 5 Mbps/1 Mbps**	Total Number	Number with access to at least 5 Mbps/1 Mbps**
All Addressable Living Unit* Locations in Loop Qualification Database	17,545,676		454,739	
Living Units with access to at least 1.5 Mbps Downstream from the Applicants	16,181,759		316,342	
Living Units with access to at least 5 Mbps** Downstream from the Applicants	14,705,904	14,689,450	216,537	216,537
Living Units with access to at least 12 Mbps Downstream from the Applicants	11,566,881		163,861	
Living Units with access to at least 40 Mbps Downstream from the Applicants	7,931,168		87,951	

## Responses to Narrative Questions

*May 8, 2018*

1. *How CenturyLink determined when to exclude an addressable location in CenturyLink's (or legacy Qwest's) loop qualification database from CenturyLink's merger commitment deployment analysis because of universal service support (including CAF I and/or CAF II);*

In the *CenturyLink/Qwest Merger Order*, the Commission required CenturyLink to report semiannually, beginning March 1, 2012, its progress toward meeting its 3-year, 5-year, and 7-year broadband deployment commitments in the legacy Qwest territory.<sup>1</sup>

In its first four semi-annual progress reports, CenturyLink did not exclude any addressable locations due to those locations being covered by universal service support.

Beginning with its March 1, 2014 report, CenturyLink excluded, as required by the *USF/ICC Transformation Order*,<sup>2</sup> addressable locations that had been upgraded using Connect America Fund Phase I ("CAF I") Incremental Support.

On July 1, 2016, as required, CenturyLink began reporting to the Commission locations that it had built or upgraded using CAF Phase II ("CAF II") support. CenturyLink did not exclude CAF II-supported locations from the merger progress reports it filed on March 1 and September 1, 2017, which covered the period July 1, 2016 to June 30, 2017.

In its March 1, 2018 report, CenturyLink excluded addressable locations for which the Commission had awarded CAF II support (as well as those upgraded using CAF I Incremental Support). CenturyLink did this CAF II exclusion by removing from its merger commitment deployment analysis the number of locations in Qwest territory to which CenturyLink had committed to deploy 10/1 Mbps broadband service as a condition of receiving CAF II support.

2. *How CenturyLink treated an addressable location in its merger commitment deployment analysis that had been served at one of the merger commitment's lower-speed tier levels and then was upgraded to a higher speed using universal service support (including CAF I and/or CAF II) (e.g., CenturyLink built to or served a location with non-universal service support at 1.5 Mbps, then upgraded to 10 Mbps or higher using universal service support); and*

As noted in response to Question 1, beginning with its March 1, 2014 progress report, CenturyLink excluded addressable locations that had been upgraded using CAF I incremental support. Some of these locations were included in one or more semi-annual progress reports prior to those locations being upgraded with CAF I Incremental Support, if, for example,

---

<sup>1</sup> *CenturyLink-Qwest Merger Order*, 26 FCC Rcd 4194, App. C (2011).

<sup>2</sup> *USF-ICC Transformation Order*, 26 FCC Rcd 17663 ¶ 146 (2011), subsequent history omitted.



CenturyLink had previously deployed at least 1.5 Mbps service to the location without such support. But, once a location was upgraded to a higher speed using CAF I incremental support, that location was omitted from subsequent progress reports. Thus, CenturyLink did not simultaneously use a location to meet its merger and CAF I commitments.

As to CAF II, CenturyLink initially included addressable locations supported by that program in its semi-annual progress reports. In its March 1, 2018 report, consistent with the treatment of CAF I Incremental support, CenturyLink excluded all addressable locations for which the Commission had awarded CAF II support.

3. *How CenturyLink treated an addressable location in its merger commitment deployment analysis, regardless of the speed deployed to the addressable location, if CenturyLink has accepted universal service support (including CAF I and/or CAF II) for that location but has not yet used the funds at such location.*

As noted in response to Question 1, CenturyLink excluded from its semi-annual progress reports addressable locations that had been upgraded using CAF Phase I Incremental Support. However, CenturyLink did not exclude from those reports addressable locations for which it had accepted, but not yet used, CAF I Incremental Support. At one point, CenturyLink returned a portion of the funds with no additional penalty when it had not met an interim milestone. However, CenturyLink ultimately met all of the milestones and received all of the funding.

In its March 1, 2018 progress report, CenturyLink excluded all CAF II-supported locations, including those for which it had committed to deploy or upgrade broadband service but had not yet done so. Those commitments are binding, and do not contemplate the possibility that a carrier may return some funds in the middle of the program. Indeed, the Commission adopted explicit and substantial penalties for a carrier that fails to meet its CAF II deployment commitments in a state: 1.89 times the average amount of support per location received in that state over the six-year term for the relevant number of locations that the carrier has failed to deploy to, plus ten percent of the carrier's total Phase II support received in the state over the six-year term.<sup>3</sup> For most states in legacy Qwest territory, these penalties could total millions of dollars per state.

---

<sup>3</sup> *In the Matter of Connect America Fund; ETC Annual Reports and Certifications; Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, Report and Order, 29 FCC Rcd 15644 ¶ 149 (2014).